

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

STEVE JOGODNIK,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2015-3244
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On June 9, 2015, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. The Recommended Order indicates that copies were served upon the pro se Petitioner, Steve Jogodnik, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order, after receiving an unopposed one-day filing extension. Respondent did not file a Proposed Recommended Order. No exceptions to the Recommended Order, which were due June 24, 2015, were filed by either party. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Senior Defined Contribution Programs Officer for final agency action.

ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request that he be allowed to rescind his second election that enabled him to transfer from the Florida Retirement System (“FRS”) Pension Plan to the FRS Investment Plan, or that he otherwise be allowed to return to the FRS Pension Plan, where

Petitioner's request was submitted almost six (6) years after his second election form was filed, hereby is denied. While Petitioner has alleged he was misled into changing plans by his employer and private investment advisors, Petitioner has admitted the SBA was not responsible for misleading him. Further the SBA is not responsible for any erroneous information provided by employers or their representatives, and the SBA has no jurisdiction over private parties such as investment advisors.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.

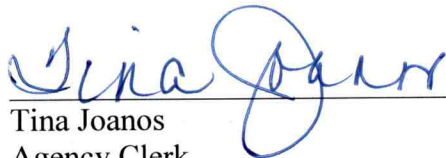
DONE AND ORDERED this 23rd day of July, 2015, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Joan B. Haseman
Senior Defined Contribution Programs Officer
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Steve Jogodnik, pro se, both by email transmission, [REDACTED] and by U.P.S. to [REDACTED] and by email transmission to Brian Newman, Esq. (brian@penningtonlaw.com) and Brandice Dickson, Esq., (brandi@penningtonlaw.com) at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 23rd day of July, 2015.



Ruth A. Smith
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard
Suite 100
Tallahassee, FL 32308

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

STEVE JOGODNIK,

Petitioner,

vs.

Case No.: 2015-3244

STATE BOARD OF ADMINISTRATION,

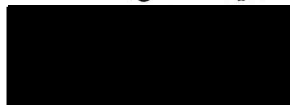
Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on April 14, 2015, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Steven Jogodnik, *pro se*



For Respondent: Brian A. Newman, Esquire
Pennington, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

EXHIBIT A

STATEMENT OF THE ISSUE

The issue is whether the SBA should grant Petitioner's request to rescind his second election, by which he transferred from the Florida Retirement System ("FRS") Pension Plan to the FRS Investment Plan, or to in some other way be returned to the Pension Plan.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on his own behalf, and presented no other witnesses. Respondent presented the testimony of Mini Watson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-8 and Petitioner's Exhibit P-1 were admitted into evidence without objection.

A transcript of the informal hearing was made, filed with the agency, and provided to the parties, who were invited to submit proposed recommended orders within thirty days. Respondent filed a proposed recommended order; Petitioner made no further filings. On May 27, 2015 Respondent filed a Motion for Extension of Time to File Proposed Recommended Order, seeking a one day extension. Having heard no objection from Petitioner and said motion not being filed for delay, it is granted. The following recommendation is based on the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

MATERIAL UNDISPUTED FACTS

1. Petitioner has been employed with the Palm Beach County Board of County Commissioners, an FRS-covered employer, since 1998.
2. Petitioner had a statutory deadline of February 28, 2003, to make an initial election between the defined benefit FRS Pension Plan and the then – new defined contribution FRS Investment Plan. On October 14, 2002, Petitioner used his initial election to enroll in the Pension Plan, establishing an effective date of January 1, 2003.

3. On January 19, 2009, Petitioner, along with an investment advisor who was with him on the telephone, called the MyFRS Financial Guidance Line to inquire as to what his opening balance would be if he exercised his second election to move from the Pension Plan to the Investment Plan. The Ernst & Young representative on the Financial Guidance Line stated: "If he was to switch over to the Investment Plan now using his one-time second election, the estimated opening account balance would be [REDACTED] Petitioner does not recall reviewing plan choice information available to him at the MyFRS.com website during this time-frame.

4. On January 24, 2009, Petitioner executed a 2nd Election Retirement Plan Enrollment form directing the SBA to transfer him from the Pension Plan to the Investment Plan. At the hearing, Petitioner confirmed that although the information hand-written on the form was filled out by someone he consulted for investment advice, he signed the form. This form was received and processed by the Respondent's third party administrator on January 29, 2009, establishing a February 1, 2009 Investment Plan effective date. The form states:

I understand that my one-time 2nd Election is irrevocable and that I must remain in the plan in Section 1 until my FRS-covered employment ends and I retire. I understand that I can find a description of my rights and responsibilities under the FRS Pension Plan and the FRS Investment Plan in the respective Summary Plan Descriptions, Florida Statutes, and Administrative Rules available through the MyFRS Financial Guidance Line or at MrFRS.com.

(emphasis in original).

5. On January 29, 2009, a confirmation notice was mailed to Petitioner at 636 Orange Road, Clewiston, Florida, notifying him that his second election had been received and further advising him:

If you feel this retirement plan election was made in error, you may be able to cancel it. Please call the MyFRS Financial Guidance Line at 1-866-446-9377, Option 2. Failure to notify us

timely (i.e., no later than the last business day of the month following your election month) will void your right to cancel this election.

Petitioner testified at hearing that he had no knowledge until recently that he had been transferred to the Investment Plan, but confirmed at hearing that his address in 2009 was 636 Orange Road, Clewiston, Florida. There is no record evidence that Petitioner requested that his second election be rescinded in accordance with the above provision.

6. Petitioner submitted a Request for Intervention on February 10, 2015, asking to rescind his second election. His request was denied and he was notified of his right to a hearing to challenge this decision. Petitioner then filed a Petition for Hearing requesting the same relief, and this administrative proceeding followed.

7. Petitioner contends that he was misled into transferring to the Investment Plan, but not by an employee or representative of the SBA. Petitioner blames his employer and financial advisors he consulted for providing him erroneous information about changing retirement plans.

CONCLUSIONS OF LAW

8. Movement between the Pension Plan and the Investment Plan is governed by Section 121.4501(4)(g), Florida Statutes, which states, in pertinent part:

After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay.

§ 121.4501(4)(g), Fla. Stat. (2014) (emphasis added).

9. Members of the FRS are allowed only one opportunity to switch plans. Because Petitioner has already used his one-time second election, he has exhausted his only opportunity to move between plans. There is a very limited opportunity to rescind a second election pursuant to the grace period provided under Rule 19-11.007, Florida Administrative Code:

(4) Grace Period.

(a) If a member files an election with the Plan Choice Administrator and the member realizes that the election was made in error, or if the member has reconsidered his or her plan choice, the SBA will consider, on a case-by-case basis, whether the election will be reversed, subject to the following: The member must notify the SBA by a telephone call to the toll free MyFRS Financial Guidance Line at: 1(866) 446-9377, or by written correspondence directly to the SBA, to the Plan Choice Administrator, to the Financial Guidance Line, or to the Division, no later than 4:00 p.m. Eastern Time on the last business day of the election effective month.

(b) If the request to reverse the election is made timely and the SBA finds the election was made in error, the member will be required to sign a release and return it to the SBA no later than 4:00 p.m., Eastern Time, on the last business day of the election effective month prior to the election's being officially reversed.

Upon receipt of the release, the Division and the Plan Choice Administrator will be directed to take the necessary steps to reverse the election and to correct the member's records to reflect the election reversal.

(c) A confirmation that the election was reversed will be sent to the member by the FRS Plan Choice Administrator.

(d) The member retains the right to file a subsequent second election consistent with subsections (2) and (3), above.

(e) Nothing contained in this subsection will interfere with a member's right to file a complaint, as permitted by Section 121.4501(8)(g), F.S. and discussed in Rule 19-11.005, F.A.C.

Rule 19-11.007(4), Fla. Admin. Code

10. Petitioner had until the last business day of February 2009 to request rescission of his second election. His first request to do so was in 2015, almost six years beyond the time allowed under the above rule.

11. Petitioner's contention that he was misled into changing plans by inaccurate information he received from his employer and private investment advisors he consulted is not cognizable in this forum. The SBA has no jurisdiction over private parties and is not responsible for the actions of employers. See § 121.021(10) ("Employers are not agents of the... state board... and the [SBA] is not responsible for erroneous information provided by representatives of employers."). At hearing and in various communications since hearing, Petitioner has asserted that his Investment Plan choice confirmation should have been sent to him by certified mail, that he did not receive good advice from the SBA or its third party providers, and that no one adequately warned him of the consequences of his actions in using his second election to transfer out of the Pension Plan. My detailed review of the record here has not found any support for these contentions.

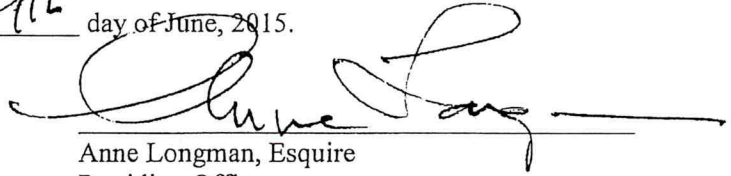
12. The Florida Statutes creating and governing the Florida Retirement System, and Petitioner's rights and responsibilities under them, are clear, and the SBA cannot deviate from them. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). The SBA's construction and application of Chapter 121, Florida Statutes, the statute it is charged to implement, are entitled to great weight and will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. Level 3 Communications v. C.V. Jacobs, 841 So.2d 447, 450 (Fla. 2002); Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st DCA 1998).

13. It is unfortunate that Petitioner is not in the retirement plan that he now would prefer, but Respondent has no authority to grant the relief he has requested.

RECOMMENDATION

Having considered the law and the undisputed facts of record, I recommend that Respondent, State Board of Administration, issue a final order denying the relief requested.

RESPECTFULLY SUBMITTED this 9th day of June, 2015.



Anne Longman, Esquire
Presiding Officer
For the State Board of Administration
Lewis, Longman & Walker, P.A.
315 South Calhoun Street, Suite 830
Tallahassee, FL 32301-1872

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will set out the final agency decision in this case.

Filed via electronic delivery with:
Agency Clerk
Office of the General Counsel
Florida State Board of Administration
1801 Hermitage Blvd., Suite 100
Tallahassee, FL 32308
Tina.joanos@sbafla.com
mini.watson@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Steven Jogodnik



and via electronic mail only to:

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Brandice D. Dickson, Esquire
Pennington, P.A.
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Counsel for Respondent